

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2496 of 1999

with

FIRST APPEAL No 2500 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI  
and  
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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EXECUTIVE ENGINEER

Versus

BHURIBEN W/O HIMATSINH NANURAM  
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Appearance:

IN FIRST APPEAL NO.2496 of 1999  
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MR MUKESH R SHAH for Appellant  
MR KM SHETH for Respondent No.1  
MR KG SHETH, Ld. AGP for Respondent No.2 and 3.

IN FIRST APPEAL NO.2500 of 1999  
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MR KG SHETH, Ld.AGP for Appellants  
MR KM SHETH for Respondent No.1  
MR MR SHAH for Respondent No.2  
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CORAM : MR.JUSTICE M.H.KADRI  
and  
MR.JUSTICE C.K.BUCH

Date of decision: 14/03/2000

COMMON ORAL JUDGEMENT {Per: Kadri, J.}

1. First Appeal No.2496 of 1999 is filed by the Executive Engineer, Small Irrigation Division, Dist. Panchayat, Godhra, whereas First Appeal No.2500 of 1999 is filed by the State of Gujarat and Addl.Special Land Acquisition Officer, Panchmahals, Godhra. The above appeals filed under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to be as 'the Act') read with Section 96 of the Code of Civil Procedure, 1908, challenging the common judgment and award dated November 16, 1998, passed by the learned Second Extra Assistant Judge, Panchmahals at Godhra, in Land Acquisition Reference No.370 of 1993, by which the Reference Court determined the market value of the acquired lands of the respondent-claimant situated at village Aagwada Tal. Dahod, District Panchmahals, at Rs.11.87/- paise per sq.mt. alongwith solatium and additional amount under Section 23(1-A) of the Act. The same award of the Reference Court, we propose to dispose them by this common judgment.

2. A proposal was made by the Executive Engineer, Small Irrigation Division, District Panchayat, Godhra, District Panchmahals, to the State Government for acquisition of the agricultural lands situated at village Aagwada for the public purpose of 'Aagwada Mota Falia Water Tank Project'. The said proposal was scrutinised by the Government and notification to acquire lands of the claimant-respondent came to be issued under Section 4(1) of the Act, which came to be published in the Government Gazette on November 12, 1992. After following the usual procedure under the Act, notices under Section 9(3)(4) of the Act were served to the land owners. In response of the notices issued, the claimant appeared before the Land Acquisition Officer. The Land Acquisition Officer on the basis of material produced before him made his award on October 8, 1993, and offered compensation to the claimant at the rate of Rs.0.60 paise per sq.mt. for the acquired lands of the respondent-claimant situated at village Aagwada. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, the respondent-claimant submitted application under Section 18 of the Act requiring the Land

Acquisition Officer to refer application to the Court for determination of adequate compensation. Accordingly, reference was made to the District Court, Panchmahals, which came to be numbered as Land Acquisition Reference No.370 of 1993.

3. Before the Reference Court, power of attorney holder of the claimants, namely, Surensinh Bhairavsinh Thakor was examined at Exh.13. During his deposition, he produced xerox copy of the sale deed of revenue Survey No.363/1 of village Katwara and Exh.12 copy of index of sale of revenue Survey No.207 and 205/1 of the same village. Surprisingly the Reference Court, without there being any sale deed in respect of revenue Survey No.207 and 205/1 of same village, taking into consideration the sale price of said survey number held that revenue survey no.362 of village Katwara was sold at the rate of Rs.20.03p/- per sq.mt. in the year 1986. It is settled legal principle that under section 51-A certified copy of the index is admissible evidence but unless and until vendor and vendee of the sale is examined, no reliance can be placed on the certified copy of the sale index or document (see the case of Special Deputy Collector and another Vs. Kurra Sambasiva Rao and others reported in AIR 1997 Supreme Court page 2625). Therefore, for determining the market value of the acquired lands, the certified copy of index of sale produced at Exh.12 cannot be considered and shall have to be ignored because no sale deed was produced before the reference court and neither the vendor nor vendee were examined by the claimant.

Sale Deed at Exh.15 was in respect of revenue survey No.363/1 situated in the village Katwara which was sold by Amarsinh M.Kathaliya on November 11, 1986, at the price of Rs.10.50p/- per sq.mt. to the Agricultural Produce Market Committee, Dahod. The genuineness of sale deed Exh.12 was not disputed as the said Amarsinh M.Kathaliya was examined in Land Acquisition Reference No.369/93 with respect to the acquired lands of village Katwara. The price of the lands under sale deed Exh.15 was at Rs.10.15p/- per sq.mt. in 1986. It is settled legal principle that prices of lands increases day by day, and the Court can take judicial notice of it. This Court in the reported decision 1998(1) GLR page 130 had given rise of price at 10% p.a. Admittedly, there was a gap of six years between execution of sale deed Exh.15 and issuance of notification of the present acquired lands under Section 4(1) of the Act. If rise in price at the rate of 10% p.a. for six years is given to the sale price of sale deed Exh.15, then the price would come to

Rs.16.25p/per sq.mt. as on July 1992. As per the decision of the Supreme Court reported in AIR 1997 Supreme Court page 1791 in the case of Shimla Development Authority and others Vs. Smt. Santosh Sharma and another, when sale instance of non-agricultural lands is relied on for determination of market value of agricultural lands, 40% should be deducted towards development and other charges. If the deduction is given at 40% to the market price of non-agricultural lands which was approximately Rs.16.25p/- per sq.mt. the net market value of the agricultural lands in the year 1992 would come to Rs.10.50p/- per sq.mt. The claimants would also be entitled to the statutory benefits under Section 23(1-A) and 23(2) and interest under Section 28 of the Act.

4. Learned counsel for the respondent No.1-original claimant has vehemently submitted that, the appeal be remanded to the reference Court so that the claimant can lead evidence in support of their claim for enhanced compensation of the acquired lands at the rate of Rs.20.00/- per sq.mt. The submission made by learned counsel for the claimant deserves to be rejected. The claimant had sufficient opportunity to lead evidence in support of their claim before the reference Court. On the contrary, they had produced and proved sale deed Exh.15 in respect of lands of survey No.363/1, which was in respect of sale of non-agricultural lands. If the claimant had not availed of the opportunity to lead evidence in support of their claim of enhanced compensation, they cannot make grievance that they had no sufficient opportunity of leading evidence before the reference court. The claimant cannot be permitted to fill up the lacuna by remand of the appeal. In the instant case, considering the facts of the case, the market value of the acquired lands of village Aagwada determined at Rs.10.50p/per sq.mt. is, in our opinion, just and adequate compensation to be awarded to the claimant keeping in mind the fertility and the situation of the acquired lands.

5. In the decision of Meharban and others vs. State of U.P. and others reported in AIR 1997 Supreme Court page 2664, the Supreme Court has ruled that, even if no witness corrected with three sale deeds was examined, the said evidence which was inadmissible, even then it is the duty of the Court to take all the relevant factors into consideration and determine compensation instead of remitting the matter to reference Court by prolonging the agony of the parties. In view of the above decision of the Supreme Court and the settled legal principle, we are

of the opinion that, when there is evidence available for determination of market value of the present acquired lands, appeal cannot be remitted to the reference Court for redetermination of the market value of the acquired lands.

6. For the foregoing reasons, the appeals are partly allowed. The market value of the acquired lands of village Aagwada is determined at Rs.10.50p/- per sq.mt. as on November 12, 1992. The claimant would also be entitled to statutory benefits under Section 23(1-A), 23(2) and interest under Section 28 as per the amended Act. The award of the Reference Court be modified accordingly. There shall be no order as to costs. Office is directed to draw the decree in terms of this judgment.

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